

The Influence of Just War Perspectives

Implications for U.S. Central Command

By TYLER RAUERT

Three quarters of the miseries and misunderstandings in the world would finish if people were to put on the shoes of their adversaries and understood their points of view.

—Mahatma Gandhi

Is terrorism a legitimate method of warfare? Can deliberate attacks on civilians intended to further a just cause ever be justifiable? Can they be morally permissible? Morally required? How else can the weak possibly defeat the strong? These are vital questions to U.S. Central Command (USCENTCOM)—not because of the way the combatant command might answer them but because of the reply they often receive within the USCENTCOM area of responsibility (AOR).

While state actions that intentionally target civilians for violence are almost universally condemned, no corresponding international consensus exists on how to deal with nonstate actors that do the same. Some consider such deeds as crimes, others see them as illegitimate acts of war, and still others view them as necessary and justifiable efforts to repel aggression or occupation. The last perspective is particularly prevalent in the Muslim-majority countries of the Near East where groups such as Hizballah and Hamas,¹ widely condemned as terrorist organizations in the West, enjoy considerable popular support as legitimate resistance movements.

What does this difference of opinion on the legitimacy of violence against civilians mean for counterterrorism cooperation



Army M1A1 Abrams tank patrols in Baghdad

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U.S. Air Force (John L. Houghton, Jr.)

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with the United States from the nations of the Middle East and Central Asia?²² Will cooperation be half-hearted and only grudgingly offered under political pressure? Is where one stands on the issue simply a function of where one sits politically? Not necessarily. While “fundamentalist” interpretations exist on all sides, there are still shared tenets on the resort to force and the conduct of hostilities that can serve as the foundation on which to build effective counterterrorism cooperation between the United States and the nations of the Near East.

This work first examines the importance of consensus-building to international cooperation. It then draws out how divergent perspectives on shared principles may inhibit international efforts to confront violent non-state actors, including the struggle to combat terrorism. Finally, it suggests methods for USCENTCOM to bridge this gap and increase the effectiveness of counterterrorism cooperation between America and the nations of the region.

International Cooperation

The nature of the international system means that the effectiveness of cooperation on any issue is largely a function of the level of agreement on the norms underpinning it. The customary principles governing conflict between states, for example, are widely followed not only because they are codified in treaties and international conventions,³ but also because they make practical sense as self-imposed restraints on the use of force. They especially make sense when the use of force is designed to facilitate a return to peace while minimizing losses on all sides without impeding the goals of hostilities. The savagery of war is *not* reduced by international humanitarian law, but by the voluntary compliance that results from acceptance of the norms that underpin it. The law acts as a guide to implement this basic agreement on the practical necessity to limit violence during warfare and how to do it.

Similarly, today’s threat of global terrorism is such that no international effort to combat it will be effective without the voluntary and enthusiastic cooperation, if not the leadership, of the peoples of the Middle East and Central Asia. They must have ownership of the international effort alongside Western partners. This ownership will be accomplished only after genuine consensus is reached on, first, the justification for the

resort to force by nonstate actors and, second, the limitations on the use of force by these players. Such a consensus already exists with regard to state-to-state violence and is the necessary first step toward authentic cooperation to combat terrorism.

This consensus-building requires a serious effort among all parties to listen, understand, and collaborate, even where differences seem irreconcilable. One such “irreconcilable difference” is that support for groups such as Hamas and Hizballah is often dismissed as irrational, misguided, or simply anti-Semitic. That may be, but it is also very

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real and is sustained by reasoned argument over and above the emotions and prejudices that may also be in play. Likewise, a widely held view in the region is that the United States considers Hamas and Hizballah to be terrorist organizations only because they threaten Israel, not because of the methods they employ. This perception is strengthened by past U.S. support to resistance movements in the region that employed questionable means to achieve their goals such as the Afghan resistance against the Soviets. These perceptions diminish the ability of the United States and other Western nations to work with the peoples of the Muslim world to combat the threat of terrorism.

Shared Principles, Divergent Foci

A basic agreement on the norms that underpin limitations on state-to-state violence allows international humanitarian law to guide state practice in warfare. At the same time, the tolerance and even encouragement of violence by movements such as Hamas and Hizballah, which intentionally target noncombatants, demonstrate a genuine disagreement over such norms by nonstate actors. This incongruity makes the intrinsically motivated cooperation so necessary for states to combat terrorism unattainable. The source of this divergence can be found in the Just War traditions as

they developed in the broader Middle East and in the West.

While a historical survey of Just War traditions is beyond the scope of this article, it is worthwhile to note that “every civilization has tried to impose limits on violence, including the institutionalized form of violence we call war. After all, the limitation of violence is the very essence of civilization.”²⁴ These limits usually include norms regulating the resort to force, the *jus ad bellum* in the Western tradition, as well as the conduct of hostilities once the use of force is initiated, the *jus in bello*. An examination of the particular limits on violence in the two traditions is less important here than an understanding of how the two regions approach these limits.

Use of Force in the Broader Middle East. The Western perception of Just War in the Muslim world is multifaceted. While “most Muslims would agree that international norms of behavior in wartime conform to Islamic injunctions on humane behavior toward the enemy,”²⁵ and while efforts within the state system to shift international norms closer to regional understandings have at times proven successful,²⁶ anticolonial sentiments color modern thinking on the just recourse to force and the conduct of hostilities. Whether framed in terms of nationalist arguments or an Islamic idiom, anti-imperialist sentiments predominate in modern discourse on war and peace throughout the broader Middle East. The “Third World context” of much of the Muslim world, where colonial subjugation is bitterly resented, retains echoes of fear of foreign domination.²⁷ Some even argue that “the fundamentalist attack on Western values is . . . the Muslim version of the attack on ‘ne imperialism’ that characterizes many Third World polemics against the current international order.”²⁸

This pervasive anticolonial sentiment has a significant effect on Just War thought in the region that often blends national liberation perspectives with those of Islam. While the majority of medieval writers in the region focused on legitimate means in warfare, modern writers concentrate on the just recourse to force, particularly the justice of the cause, with comparatively little attention to the legitimate conduct of hostilities. “Contemporary discussions of jihad,” for example, “now often assert that wars are justified in Islamic law when they are conducted to end exploitation and oppression by the superpowers or to achieve liberation from the forces of

imperialism.”⁹ The logic holds that if a cause is just, any method necessary to further that cause is also just, especially if the partisans of the just cause operate from a point of comparative military weakness, thus eliminating the need to address considerations of the legitimate means of warfare.

Emphasis on the justice of the cause, as in the Reformation wars of Europe, to the exclusion of the means by which the cause can be justly pursued, ignores the fact that unspeakable atrocities may be carried out in the name of an otherwise worthy end. In the absence of fully developed norms on the limitations on conducting hostilities, support for groups that pursue just causes *unjustly* will continue to flourish in the Middle East and Central Asia, thus limiting the ability of regional and Western governments to combat terrorism.

Use of Force in Western Nations. While there is a strong emphasis on the justice of the conflict in the Near East, the Western conception of modern Just War theory tends to see conduct *in* a war as independent of the justice of a war. This perspective, influenced by the post-World War II creation of the United Nations and the decolonization process that followed,¹⁰ seeks to “civilize” just and unjust wars alike by asserting that norms governing the conduct of hostilities are applicable whenever a situation reaches a certain threshold of active belligerency. The underlying causes of the conflict are seen to have no bearing on its proper conduct, and therefore most Western thought on political violence is disproportion-

ately focused on the prosecution of conflict over the legitimacy of conflict initiation.

One might argue that the preponderance of Western thought on Just War during the past century is a refinement and institutionalization of the limitations on the conduct of hostilities within international humanitarian law. While a focus solely on the legitimacy of the recourse to force can lead to an acceptance of terrible atrocities in the name of a just cause, a focus on the just prosecution of conflict to the exclusion of meaningful reflection on the just initiation of violence carries unintentional but nonetheless significant undertones of neoimperialism. Restraints on the conduct of violence seem designed to disarm the weak and entrench the injustice of the strong when they are not accompanied by equally stringent limitations on the prior condition of the just recourse to force.

The limited analysis of constraints on recourse to force that does occur in the West smacks of colonialism to many. Arguments for the legality of humanitarian intervention and preemptive/preventative war can both be seen, rightly or wrongly, as pretexts for the militarily strong to impose their will on the weak. Moreover, the claim that the recourse to force is only justified in self-defense or with Security Council authorization is simply insufficient when it comes to nonstate actors whose causes are widely seen as just within a given population. Many would argue that violent resistance against *colonialism* or *occupation*, however broadly those terms are defined, is the paradigmatic Just War—it is self-defense by defini-

tion. Others see the UN Security Council not as a tool to bring legitimacy to international collective action but as simply another way for the strong to exercise dominion.

Westerners must ask themselves whether the just recourse to force has been subordinated in practice to the conduct of hostilities. In the zeal to ensure that all belligerents abide by the limitations on the conduct of hostilities regardless of the justice of one’s cause, has the West rendered justice in the resort to force irrelevant? If so, some of the most important partners in the international effort to combat terrorism may view norms regarding the use of force by nonstate actors as hypocritical at best and a threat to their sovereignty at worst. Former European colonies may view the limitations on the methods and means of violence as a way to keep the weak from fighting the perceived unjust initiation of hostilities by the strong, whether through “preemption/prevention” or “humanitarian intervention,” therefore limiting the ability of the two cultures to work together against a common threat: terrorism.

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Marine gives sack of grain to Somali woman in Mogadishu during Operation *Restore Hope*



U.S. and Canadian soldiers board CH-47 Chinook helicopter en route to Tora Bora region in Afghanistan

Americans must also ask themselves whether the relative dearth of constructive discussion of the just recourse to force, particularly by nonstate actors, might give credence to charges of Western double standards. Upon what principle does the United States support or deny the right of nonstate actors to take up arms? Upon what principle does it back particular resistance organizations? Is support based simply on expediency or does it also have to do with the justice of a cause and how that cause is pursued? If it is the latter, the United States is in good stead. If it is the former, we give credibility to those who claim that America only condemns as terrorists those who oppose its interests—that one man's terrorist truly is another man's freedom fighter. Such a perception only undermines efforts at cooperation to combat a common threat and must be addressed if the desire to confront the phenomenon of terrorism is sincere.

Harmonizing Norms

It is evident that while the United States and the nations of the Muslim world share basic principles regarding the just use of force, they differ on which components of the various Just War traditions they emphasize, with the broader Middle East generally focusing on the just recourse to force at the expense of the just conduct of hostilities and the United States tending to subordinate the justice of war to justice in war. This divergence results in different conceptions of the justice of the initiation of hostilities and limitations of violence, particularly regarding violence against civilians by nonstate actors in what are perceived to be just causes. These differences, however, are not irreconcilable, and they do not indicate that international cooperation to combat terrorism cannot proceed. They simply mean that there is hard work to be done to increase the effectiveness and compatibility of cooperation.

The divide can be bridged by establishing an international consensus on the norms that characterize the legitimate use of force by nonstate actors that encompasses both the resort to force and the conduct of hostilities. The international community has largely established such a consensus on the norms regarding interstate conflict upon which international humanitarian law is built. That ongoing effort is one of the great success stories of modern civilization and serves as a useful guide for norm-setting regarding

nonstate violence. It is, however, incomplete. International humanitarian law is by and large not designed to deal with nonstate actors or the acts of violence they commit, and the fact that there is ambiguity concerning groups such as Hamas and Hizballah testifies to the need to augment existing norms.

The consensus-building process and accompanying international cooperation already exist in many respects. For example, significant agreement is emerging on the need to combat terrorism that is reflected in international conventions and corresponding legislation in individual countries. This emerging international consensus is a focus of study for the Department of Defense's (DOD's) Near East South Asia Center for Strategic Studies (NESA Center) and its partners. While concrete steps are being taken against terrorist groups whose causes are not widely seen as just in the region and around the world, it is more difficult to collectively combat groups with significant support, whose causes are perceived as just, such as Hizballah and Hamas. This ambiguity undermines overall counterterrorism cooperation even against groups whose causes are not widely seen as just, such as al Qaeda.

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To draw out these nascent consensus-building efforts and engender more effective international cooperation to combat the phenomenon of terrorism, statesmen, soldiers, and scholars should encourage a "process of conversation between civilizations, the process of deliberate non-violent adjustment, dialogue and negotiation between competing sources of norms governing violent conflict."¹¹ Just War traditions are a good place to start this process; they are dynamic systems of thought and practice that offer the guidance of centuries on the justification for and execution of violence, but they are not fixed dogmas. They did not develop in isolation, and they continue to evolve in concert, more mutually influential than exclusive. They are still evolving and adapting to shifting international realities. Each culture and tradition must critically examine its understanding of its own Just War norms as well as the concerns of the others.

Scholars, statesmen, and bearers of arms in the Middle East and Central Asia will be well served to address limitations on the conduct of hostilities more systematically, even when undertaken in a just cause. While *jus in bello* considerations do figure into some of the discourse on war and peace in the region, they are dwarfed by *jus ad bellum* concerns. Moreover, the discussion of the conduct of hostilities that does occur "is usually undertaken by modernists seeking to reinterpret the Qur'an and sunna so that Islamic injunctions correspond to current international practice"¹² rather than seeking

DOD (Chad J. McNeeley)



GEN Petraeus and ADM Mullen meet in Baghdad

to enter into a dialogue about what norms are or should be shared across civilizations. Regional players may also realize a benefit from devoting attention to whether a just cause is a sufficient reason to commence hostilities or simply one among a number of necessary conditions.

Moving the Dialogue Forward

Similarly, Western scholars and statesmen can move the dialogue on shared norms forward by more consciously addressing concerns of the just recourse to force. There is precious little discussion on just recourse in the Western world as opposed to the just conduct of violence, with the notable and often unhelpful exceptions of humanitarian intervention and preemptive/preventative war discussed earlier. Opinion leaders in the West should critically examine whether they would be willing to give up rights they hold dear in the face of a superior opponent they could not defeat by conventional means. Is the survival of a nation, or of democracy, a sufficiently just cause to allow departures from accepted norms limiting the conduct of hostilities?

While the United Nations and similar organizations serve the function of intercultural dialogue well on most issues, USCENTCOM can constructively engage the process of deliberation over the long-term just resort to and conduct of violence in the broader Middle East in a number of ways:

- partnering with DOD's academic regional centers that already engage relevant players in the USCENTCOM AOR
- strengthening relationships and cooperation between the command and elements of the U.S. Government outside of the Department of Defense
- leveraging international programs
- examining the possibilities generated by such initiatives as the joint venture of U.S. Special Operations Command and U.S. Strategic Command called Sovereign Challenge, a collaborative information-sharing Web portal focused on terrorism-related issues.

Regional centers such as the NESACenter and the George C. Marshall European Center for Security Studies build sustained relationships with opinion leaders and government officials in the USCENTCOM AOR and also build regional cooperation on security issues through an academic environment where issues such as terror-

ism and the justification for violence are candidly addressed. Combatant command participation in regional center courses and other programs might be increased through guest-speaking roles or course participation to allow USCENTCOM personnel more contact with regional players. These regional centers may also be a vehicle through which the command could host events in the region to focus on these issues at forward locations such as U.S. bases and Embassies as well as regional states' defense and civilian universities.

USCENTCOM may also consider establishing fellowships at regional centers to allow up-and-coming officers to conduct command-specific research on perceptions of the justification and management of violence in the region or to allow officers returning from duty in the broader Middle East an opportunity to articulate issue-relevant thoughts on their experience. The command might also sponsor a scholar or policymaker from the region as visiting faculty at a regional center to further the exchange of ideas and allow for in-depth understanding.

The command can serve its interest in fostering dialogue that leads to increased cooperation to combat terrorism throughout its AOR by strengthening its collaboration with other elements of national power, particularly with the State Department's Office of the Coordinator for Counterterrorism (S/CT). The S/CT Regional and Trans-Regional Affairs Directorate builds political will and capacity to combat terrorism among international partners, making it a natural ally in any effort to engage parties in the broader Middle East on the issues of the justification for and limitations on violence as well as other terrorism-related issues.

U.S. Central Command can stimulate intercultural engagement on the justification and management of violence by leveraging the existing programs on terrorism-related topics conducted by other U.S. Government entities. The State Department's Anti-Terrorism Assistance Program already goes a long way toward fostering cooperative efforts between U.S. and partner nation law enforcement personnel, but USCENTCOM could also sponsor regional police officers to attend training programs at the Department of Homeland Security's Federal Law Enforcement Training Center, chiefly through its Counterterrorism Division or

International Law Enforcement Academies. The command might also invite the Counterterrorism Section at the Department of Justice or the Homeland Security Center of Excellence for the Study of Terrorism and Response to Terror (START) to conduct workshops, seminars, and lectures on terrorism-related topics in the region. START already runs a program on intercultural and inter-religious dialogue among U.S. college

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students. The command might assist in expanding this program to include students from the broader Middle East or sponsor a regional pre- or postdoctoral fellow in the START Fellows Program. The U.S. Institute of Peace is yet another resource on which U.S. Central Command might seek to capitalize.

While collaboration with existing programs in the U.S. Government and government-sponsored and -affiliated entities enables USCENTCOM to engage in the process of deliberation over the just resort to and conduct of violence, they are by no means the only avenues available. The United Nations has initiated an "Alliance of Civilizations," and the North Atlantic Treaty Organization offers multiple opportunities for engagement.

USCENTCOM's engagement in the process of intercultural deliberation on these issues might also be facilitated by building on the model offered by Sovereign Challenge, which represents the kind of interaction necessary to respond to the disagreement over whether terrorism conducted to further a just cause can ever be justifiable. USCENTCOM could use the Sovereign Challenge Web site as a model for a platform to sustain a network of opinion leaders and officials in the region, encourage visits among players in multiple locations, and facilitate workshops and exercises.

Whatever role the command plays, one of the concrete steps currently being taken to encourage dialogue and negotiation

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among competing sources of norms on violent conflict is taking place in July 2008 at the National Defense University. The NESACenter, along with the Inter-University Center for Legal Studies at the International Law Institute, will host an event on the legal and moral environment to combat transnational threats such as terrorism in the Near East and South Asia. This event and the edited proceedings to follow should engage the perceptions of the justification and limitation of violence both in the region and in the Western world at length and are a forum where the process of deliberate conversation and nonviolent adjustment can begin.

Addressing the justification for the resort to force by nonstate actors and the limitations on the use of force by these players will not end terrorism, nor will it convince nonstate actors to give up violence. The test of success in this dialogue will not be that one side or another wins the argument over the correct answers to the questions posed at the beginning of this article, but that the differences are acknowledged, examined, and in some way accommodated over time so shared norms can be established to enable the community of nations to work together to combat the common threat of terrorism. Such a process has occurred and continues to occur regarding violence undertaken by states. This gives us reason to believe that the same result can eventually be achieved with nonstate actors. Such a process is in fact already occurring in subtle ways. Our task is to acknowledge this development and constructively engage in it. **JFQ**

NOTES

¹ While Israel and the Palestinian territories do not fall within the USCENTCOM AOR, the conflict there has reverberations across the Arab and Muslim worlds. It critically impacts the nations in the command's AOR and is crucial to understanding how the peoples of the region understand terrorism.

² The *Middle East and Central Asia* includes all the nations of the USCENTCOM AOR, as well as Israel, the Palestinian territories, and Turkey.

³ These customary rules were codified over time in the Geneva Conventions of 1864, 1906, 1929, and 1949, and The Hague Conventions of 1899 and 1907.

⁴ François Bugnion, "Just Wars, Wars of Aggression and International Humanitarian Law," *International Review of the Red Cross* 84, no. 847 (September 2002), 523–546.

⁵ Sohail Hashmi, "Saving and Taking Life in War: Three Modern Muslim Views," *The Muslim World* 89, no. 2 (April 1999), 158.

⁶ See article I of Additional Protocol I to the Geneva Conventions of 1977, which seeks to regulate the use of violence in struggles for self-determination. The protocol extends the protections and responsibilities of international humanitarian law (IHL) to insurgents, militias, and other nonstate actors engaged in armed hostilities against "colonial domination and alien occupation" as well as "racist regimes" that deny the exercise of self-determination. While not adopted by all states, most notably the United States and Israel, Additional Protocol I has profoundly affected the international understanding of just recourse to force and limitations on violence in that it recognizes the legitimacy of nonstate actors to commit acts of violence for political purposes. This instrument was largely the product of actors within the USCENTCOM AOR, Palestinian territories, and other former colonies as well as the Soviet Union. The role of players from the broader Middle East in this IHL development demonstrates the rich and diverse understanding of the justification and limitation of force in the region. Rather than being motivated by Islamic tradition, the formulation of Additional Protocol I was colored primarily by nationalism. See James Turner Johnson, *The Holy War Idea in Western and Islamic Traditions* (University Park: Pennsylvania State University Press, 1997), 615.

⁷ Ann Elizabeth Mayer, "War and Peace in Islamic Tradition and International Law," in *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, ed. John Kelsay and James Turner Johnson (Westport, CT: Greenwood Press, 1991), 205.

⁸ Sohail Hashmi, "Interpreting the Islamic Ethics of War and Peace," in *The Ethics of War and Peace*, ed. Terry Nardin (Princeton: Princeton University Press, 1996), 159.

⁹ Mayer, 205.

¹⁰ Abdullahi Ahmed An-Na'im, "Islam and International Law: Toward a Positive Mutual Engagement to Realize Shared Ideals," *American Society of International Law, Proceedings of the Annual Meeting* (2004), 160.

¹¹ James Cockayne, "Islam and International Humanitarian Law: From a Clash to a Conversation between Civilizations," *International Review of the Red Cross* 84, no. 847 (September 2002), 623. Emphasis in original.

¹² Hashmi, "Interpreting," 163.